

**(1995) 04 KL CK 0003**  
**In the High Court Of Kerala**  
**Case No : Criminal M.C. No. 559 of 1995**

Muhammed Sajeed K.

APPELLANT

Vs

The State of Kerala

RESPONDENT

**Date of Decision :** 21-04-1995

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(3), 173, 188, 2(g)  
Penal Code, 1860 (IPC) — Section 34, 4, 408, 420

**Citation :** (1995) 2 ALT(Cri) 333 : (1995) CriLJ 3313 : (1995) 1 KLJ 704 :  
(1995) 2 RCR(Criminal) 734

**Hon'ble Judges :** K.P. Balanarayana Marar, J

**Bench :** Single Bench

**Advocate :** S. Sreekumar, for the Appellant; M. Retna Singh, D.G.P., for the Respondent

## Judgement

K.P. Balanarayana Marar, J.—The question that arises in this case relates to the jurisdiction of the Kerala Police to conduct investigation against petitioner, an Indian citizen, in respect of some offences alleged to have been committed by him in the United Arab Emirates. That question arises in the context of Sec. 4 of the Indian Penal Code and Sections 4 and 188 of the Code of Criminal Procedure. Petition alleges that petitioner was employed in Fursan Travel and Tourism, Riyad, U.A.E., since September, 1993. The job was on a contract basis for a period of one year and extended by three months. After that period the contract was not renewed and the employment was terminated. Petitioner had to return to this country in December, 1994. A complaint was presented before the Deputy Inspector General of Police, Kottayam by one Mohammed Haneefa alleging that petitioner had misappropriated 10777 Riyals (Rs. 8,41,488/-) and Mohammed Haneefa had to pay the amount to the employer of petitioner since petitioner was employed there on the recommendation of Mohammed Haneefa. It was also alleged that two other persons had misappropriated other amounts. On the basis of that complaint, a copy of which is Annexure-I, the Sub Inspector of Police, Mundakayam registered Crime No. 72 of 1995 under Sections 408, 420 and 34

IPC and the first information report was lodged before J.F.C.M. - I, Kanjirappally. A copy of the FIR is Annexure-II. Petitioner seeks quashing of Annexures I and II on the ground that the Kerala Police has no jurisdiction to investigate into the crime committed in a foreign country and the averments in the complaints do not disclose any offence.

2. Heard counsel for petitioner and Director General of Prosecutions.

3. In support of his contention that the Kerala Police has no jurisdiction to investigate the crime, Learned Counsel for petitioner relied on the decision of a learned Judge of this Court in *Samarudeen v. Asst. Director of Enforcement* (1995) (1) KLT 468. Disagreeing with an earlier Division Bench decision (*Muhammed v. State of Kerala* - 1994 (1) KLT 464) which affirmed the decision of another learned Single Judge, it was held that Sec. 188 of the Code does not clothe, the local police with jurisdiction to investigate the crime. Incidentally, it is seen observed that the earlier decisions are not binding precedents since they were rendered overlooking the provisions contained in Chapter XII of the Code of Criminal Procedure.

4. The main aspect to be considered is whether this Court is bound by the decision of the Division Bench or whether the decision in *Samarudeen's* case (*supra*) has to be followed. The decision in *Samarudeen's* case, according to Director General of Prosecutions, is rendered per incuriam and is not binding since that is against the law laid down by the Division Bench in *Muhammed's* case. To understand the correct legal position it is only appropriate to refer to the decisions of the Supreme Court regarding the binding nature of precedents.

5. As early as 1965, the Supreme Court in *Shri Bhagwan and Another Vs. Ram Chand and Another*, held that it is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. It is observed that this is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.

6. In *Sri Venkateswara Rice, Ginning and Groundnut Oil Mill Contractors Co. and Others Vs. State of Andhra Pradesh and Others*, the Supreme Court expressed dissatisfaction in a co-ordinate Bench of the same High Court sitting in judgment over a decision of another Bench. It is observed that it is regrettable that the learned Judges who decided the latter case overlooked the fact that they were bound by the earlier decision and that if they wanted the earlier decision to be reconsidered they should have referred the question to a larger bench and not to ignore the earlier decision.

7. The Supreme Court in *Mamleshwar Prasad and Another Vs. Kanhaiya Lal (Dead)* through L. Rs., held that a prior decision of the court on identical facts and law binds the court on the same points in a later case. Similar views are expressed in *Eknath Shankarrao Mukkawar Vs. State of Maharashtra*, where it was held that it is open to the Judge to differ from a decision of a co-ordinate court, but in that case the only judicial alternative is to refer it to a larger bench and not to dispose of the appeal by taking a contrary view. In this decision also the Supreme Court reiterated that judicial discipline as well as decorum should suggest that as the only course.

8. The matter was considered by a Constitution Bench of the Supreme Court in *Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc.*, It was held:

It is in order to guard against the possibility of inconsistent decisions on points of law by different division Benches that the rule has been involved, in order to promote consistency and certainty in the department of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges.

9. The procedure to be followed in the case of a single Judge disagreeing with the decision of another single Judge has been stated by the Supreme Court in *Shridhar Vs. Nagar Palika, Jaunpur and Others*, . The Supreme Court observed that it is proper to refer the matter to a larger Bench for an authoritative decision. Similar views are expressed in *Sundarjas Kanyalal Bhathija and others Vs. The Collector, Thane, Maharashtra and others*, . The reason according to the Supreme Court is that the subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions and the general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute. Lawyers also would find it difficult to advise their clients as to the correct legal position. In *Hari Singh Vs. State of Haryana*, , the Supreme court observed that if courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy. It is also observed that it is a very sound rule and practice that like questions should be decided alike. Otherwise on same question of law or same set of facts different persons approaching a court can get different orders.

10. That the facts and law in both the cases were the same cannot be disputed. The question which arose for consideration in *Samarudeen's* case and in the Division Bench and the earlier Single Bench decisions was whether Kerala Police has jurisdiction to investigate offences committed in a foreign country. Divergent views are seen expressed on this aspect by the Division Bench and the later Single Bench. The learned Single Judge who decided *Samurudeen's* case has no doubt referred to the provisions contained in Chapter XII of the code and has observed that these provisions escaped the notice of the Division Bench and the

earlier single Bench. But the Division Bench had also adverted to the provisions of Chapter XIII and had given proper reasons as to why the non obstante clause in the proviso to sec. 188 will not disable the Kerala Police from conducting the investigation. The decision in Samarudeen's case is therefore seen rendered contrary to the law laid down by the Division bench which the learned Single Judge was bound to follow in the light of the principles laid down by the Supreme Court in the various decisions aforementioned. If that be so, the decision in Samarudeen's case has to be treated as per incuriam.

11. Per incuriam is the legal language for inadvertent mistake or ignorance of a statutory provision or a relevant authority. A Division Bench of this Court had occasion to consider the doctrine of per incuriam in *State of Kerala and Others Vs. K. Sankaran Nair and Others*, . What is meant by "incuria" was considered by the Supreme Court in *State of U.P. and Another Vs. Synthetics and Chemicals Ltd. and Another*, . The Supreme Court held that incuria means carelessness and in practice per incuriam appears to mean per ignorantiam.

12. For certainty of the law, a decision once rendered must bind similar cases later. It is also in the interest of public that a finality should attach to the binding decisions pronounced by courts of competent jurisdictions. The decision in Samarudeen's case was rendered without adverting to these principles laid down by the Supreme Court in various decisions. That decision has therefore no binding authority. The question of referring the matter to a larger Bench does not also arise since I am bound by the decision of the Division Bench in Muhammed's case. This is not a case of one co-ordinate bench disagreeing with another on a question of law. Since the Division Bench decision in Muhammed's case is binding on a Single Judge of this Court, the question of disagreeing with that decision does not arise. I am therefore of the view that the question need not be referred to a larger Bench for an authoritative decision on this aspect. Since the Division Bench decision is binding on me and since the decision in Samarudeen's case can be rendered per incuriam, this Crl. M.C. has to be decided on the basis of the decision in Muhammed's case.

13. The learned Single Judge who decided Hernia's case (1993) (1) KLT 412 and the Division Bench in Muhammed's case had taken note of the relevant provisions contained in the Indian Penal Code and the Code of Criminal Procedure. Sec. 4 IPC confers extra territorial jurisdiction to try offences committed by any citizen of India in any place without and beyond India. Sec. 4 of the Code of Criminal Procedure directs that all offences under the Indian Penal Code shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions contained in the Code. This is applicable to investigation, inquiry or trial in respect of all offences under any other law, but subject to the regulation of the manner or place of investigating contained in those enactments. The Section provides that all offences shall be investigated, inquired into tried and otherwise dealt with according to the provisions contained in the Code. Sec. 188 of the code provides that when an offence is committed

outside India by a citizen of India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. The Section contains a proviso that notwithstanding anything in any of the preceding sections of that Chapter, no sue offence shall be inquired into or tried in India except with the previous sanction of the Central Government.

14. The scope of these provisions had been considered by the Division Bench in paragraphs 22 to 26 of the judgment. The Division Bench observed that Sec. 4 IPC and Sec. 188 Cr. P.C. are complimentary, the former referring to the substantive law and the latter to the corresponding procedural law. It is observed that it cannot be presumed that in Sec. 188 Cr. P.C. the Legislature used the words "dealt with" by restricting the meaning to something other than investigation, inquiry or trial. The Division Bench had also placed reliance on the decision of the Supreme Court in *Ajay Aggarwal's case* (1993) SCC (Cr) 961 where it was held that even under the proviso to Sec. 188 Cr. P.C, the sanction is not a condition precedent to take cognizance of the offence. It need be, it could be obtained before trial begins. The argument is that Sec. 188 Cr. P.C. is in Chapter XIII dealing with inquiry and trial. But that according to the Division Bench is not conclusive since Sec. 188 Cr. P.C. is complementary to Sec. 4 IPC and must cover the procedure relating to investigation also. It is also observed that Headings of Chapters are external aids and can be resorted to only if there is any ambiguity in the enacting words. The observation of the Supreme Court in *Delhi Administration Vs. Ram Singh*, that the words "dealt with" in Sec. 4 Cr. P.C. include not only investigation, inquiry and trial but other aspects also was also relied on. It was for these reasons that the Division Bench held that the words "dealt with" in Sec. 188 Cr. P.C. must be held to include investigation also apart from inquiry and trial. For purposes of investigation into offences committed abroad, sanction of the central government was held to be not necessary.

15. The Division Bench has thus noticed the distinction between sections 4 and 188 of the Code of Criminal Procedure. While Sec. 4 directs that all offences shall be investigated, inquired into, tried or otherwise dealt with in accordance with the provisions contained in the code, the proviso to Sec. 188 places an embargo on inquiry or trial without the sanction of the Central Government. True, Sec. 188 comes in the Chapter under the Heading Inquiries and trials. But as observed by the Division Bench, the heading of the chapter is not conclusive since Sec. 188 Cr. P.C. is complementary to Sec. 4 IPC must cover the procedure relating to investigation also.

16. The proviso to Sec. 188 of the Code is mandatory and the absence of sanction is an absolute bar to the inquiry or trial of a case to which the provisions contained in that Section apply. Want of sanction will invalidate only an inquiry or trial and that defect cannot be cured by subsequent production of the sanction. But that is no reason why cognizance of an offence should not be taken by a Magistrate though production of sanction is required for the further progress of the case. The proviso does not bar the court from issuing a summons or a

warrant or in taking any other steps which are preliminary to an inquiry. This position has been made clear by the Supreme Court in Ajay Aggarwal's case where it was held that even under the proviso to Section 188 Cr. P.C. the sanction is not a condition precedent to take cognizance of the offence. If that be so, there cannot be any legal bar in the police conducting investigation of a crime even before the grant of sanction by the Central Government.

17. The distinction between investigation and inquiry as defined in Sec. 2(h) and Sec. 2(g) of the Code makes the position clear. Investigation includes all proceedings under the Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf. On the other hand, inquiry means every inquiry, other than a trial conducted under the code by a Magistrate or court. The term "trial" is not defined in the Code, But in criminal matters, inquiry is something different from a trial. The inquiry stops when the trial begins. It is settled law that all proceedings before a Magistrate before framing a charge which do not result in conviction or acquittal can be termed as inquiry. In short, the stage prior to the framing of a charge is an inquiry and the stage after framing of charge is a trial. What is prohibited in the proviso to Sec. 188 Cr. P.C. is only inquiry or trial without the previous sanction of the Central Government and not investigation by a Police Officer for the purpose of collection of evidence. Investigation generally consists of the examination of various persons and reduction of their statement into writing, search of places or seizure of things considered necessary for the investigation and formation of the opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial. For taking necessary steps for the same, a charge-sheet can be filed under Sec. 173. These proceedings of a police officer which come under investigation are not in any way prohibited or controlled by the proviso to Sec. 188 of the code. In other words, the sanction of the Central Government is not necessary for purposes of investigation into offences committed outside India.

18. Counsel for petitioner has raised a contention that the power of an officer in charge of a police station to investigate offences is conferred under Sec. 156 of the Code which is in Chapter XII. Such power, according to counsel, is only to investigate any cognizable case which a court having jurisdiction over the local area within the limits of such station would have to inquire into or try under the provisions of Chapter XIII. Sec. 188 Cr. P.C. is in chapter XIII and the contention appears to be that the police has no power to investigate unless previous sanction has been given by the Central Government. Chapter XIII is under the heading "Jurisdiction of the Criminal courts in Inquiries and trials". Sec. 188 Cr. P.C. provides that when an offence is committed outside India by a citizen of India, he shall be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found. The jurisdiction of the criminal courts in inquiries and trials alone is provided in that Chapter. The power of investigation is conferred on an officer in charge of a police station under Sec. 156 of the Code. Wide powers are seen given to the police under Sub-

sec. (1) of Sec. 156 in the matter of investigation of a cognizable case. But the Magistrate can order investigation of a case under sec. 156(3) only if he has territorial jurisdiction over the place where the offence was committed. But no such limitation can be imposed on the power of investigation conferred on an officer in charge of police station under sub-sec.(1) of Sec. 156 in view of the phrase "may be dealt with in respect of such offence" used in Sec. 188 of the Code. The use of that phrase in the section taken along with the proviso which bars only inquiry or trial without the previous sanction of the central government leads us to the conclusion that an officer in charge of a police station has power to investigate a cognizable offence committed by a citizen of India beyond the territorial limits of this country. The Kerala Police has therefore jurisdiction to investigate into the offences committed by petitioner in Riyad in U.A.E. That is the only conclusion possible in the light of the principles laid down by the Division Bench of this Court in Muhammed's case which are binding on me. Before leaving the case I am constrained to observe that when offences committed by Indian citizens employed overseas are on the increase, this Court has to bear in mind that it is dangerous to disturb the decisions of this Court holding the field for a period of two years and unsettle the investigation in progress in the matter of such offences. The request for quashing Annexures I and II is therefore refused and the Crl. M.C. is dismissed.